

In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 3311 of 2006

Date of decision: 14-12-2006

Shashi Bhatia and another Petitioners

Versus

M/S Deepak Colour Lab. P.Ltd. & Ors. Respondents

CORAM: Hon'ble Mr. Justice Vinod K. Sharma

Present: Mr. Arihant Jain, Advocate, for the petitioners.
Mr. Sandip Chhabra, Advocate, for respondent Nos. 1 & 2.

VINOD K. SHARMA, J (ORAL)

The present revision petition has been filed against the order dated 27-03-2006 passed by the learned Additional District Judge (1), Faridabad, vide which the order dated 12-08-2005 passed by the learned trial Court under Order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure has been set aside.

The trial Court has restrained defendant Nos. 1 and 2 from interfering in the common passage as well as toilets situated in ground floor. The learned trial court has also directed to defendant No. 3 to take appropriate action against defendant No. 1 in case any illegal and unlawful construction has been made by him on the common passage or to block the common toilets. The directions were ordered to be carried out irrespective of the fact that the construction was old one.

The learned Appellate Court has set aside the order passed

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by the learned trial Court by coming to the conclusion that without alleging and establishing special damage, the plaintiff cannot without resorting to the provisions of order 91 (1) (b) of the Code of Civil Procedure seek relief prayed for and on that basis came to the conclusion that it is only after the defendant No.3 comes to the conclusion that there is any encroachment made by defendant Nos.1 and 2, then action can be taken in accordance with law. The observations of the learned appellate Court cannot be sustained as it was nobody's case that any special damages were required to be determined nor any special damage was claimed. The plaintiff-respondent had filed a suit for injunction restraining the defendant Nos.1 and 2 from encroaching upon the common passage and common toilets. The learned trial Court, therefore, was right in issuing an order of injunction under order 39 Rules 1 & 2 of the CPC which could not be interfered with by the learned lower Appellate Court on the grounds given in the said order.

This revision petition is accordingly accepted, the impugned order passed by the Additional District Judge, Faridabad, is set aside and the case is remanded to the learned lower Appellate Court for disposing of the appeal on merit on the basis of pleadings and the material placed on record.

Dec.14, 2006
'dls'

(VINOD K.SHARMA)
JUDGE

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